

## CHAPTER 94: NUISANCES

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### 94.01 OFFENSIVE INDUSTRIES

(a) No person shall establish or build for use or operation a stockyard or slaughterhouse within 1/2 mile of a built-up residence section, or within such distance of a factory, store, church, schoolhouse, or other building where persons are employed or where they regularly assemble, or within 500 feet of a public street. This regulation concerning the establishment of a stockyard or slaughterhouse shall apply whether it is inside of the city, or within a distance of two miles from the corporate limits thereof.

(b) No stockyard or slaughterhouse within the above described area which has not been built and operated prior to December 1, 1944, shall be used or operated for the keeping, buying, selling, or slaughtering of livestock.

(c) This section shall apply to fertilizer plants and other establishments constructed after February 9, 1945, whose business, trade, or the occupations

connected therewith are of such a character as to make the plant or establishment noxious or injurious to public comfort or health. ('72 Code, 11.01) (Ord. 1283-1944) Penalty, see 10.99

#### 94.02 SWINE

It shall be unlawful for any person to keep any live swine within the city except when they are kept for immediate shipment or immediate slaughter, and are kept in sanitary, clean, and secure pens within a distance of three city blocks from the corporate limits of the city. ('72 Code, 11.02) (Ord. 529-1918) Penalty, see 10.99

#### 94.03 WEEDS

(a) Owners of real property located within the corporate limits of the City of Richmond, Indiana, shall cut and remove weeds and other rank vegetation growing on such property, including street parks, improved sidewalks and along alleys, unless such vegetation is part of an established agricultural enterprise and is currently being used for pasture or the production of hay.

(b) The Department of Metropolitan Development shall be responsible for the administration of Section 94.03 of the Richmond Code.

(c) "Weeds" shall be defined as grass and other undesirable, unattractive or unattended vegetation that are one (1) foot or higher.

(d) "Rank vegetation" shall be defined as vegetation growing with excessive luxuriance and vigor which is at least one (1) foot high or higher and/or overgrown bushes, trees, shrubs, etc. and may also be defined as dead bushes, trees, shrubs, and/or weeds.

(e) "Street parks" shall be defined as the planted area between the curb and sidewalk directly adjacent to a property.

(f) "Improved sidewalks" shall be defined as sidewalks abutting any lot or land of an owner or occupant.

(g) "Continuous Abatement Notice" shall be defined as a notice that:

(1) is issued for compliance or abatement and that remains in full force and effect on a property without further requirements to seek additional compliance and abatement authority; or seek additional orders for the same or similar violations; and

(2) authorizes specific ongoing compliance and enforcement activities if a property requires re-inspection or additional periodic abatement; and

(3) can be enforced, including assessment of fees and costs, without the need for additional notice or hearing; and

(4) authorizes the Department of Metropolitan Development to assess and collect ongoing costs for continuous abatement notice activities from any party that is subject to the Department's notice.

(h) Weeds and other rank vegetation subject to removal under this code provision shall be those which are one (1) foot high or higher. All trash and debris discovered when removing weeds and other rank vegetation must be removed at the time of mowing. All cut weeds and other cut rank vegetation left on sidewalks and/or streets must be removed. Property owner must maintain trees and shrubs within the minimum height clearance requirements of eight (8) feet over sidewalks and street parks and within the minimum height clearance requirements of fourteen (14) feet over streets and alleys.

(i) Any property owner who fails to remove weeds and other rank vegetation, as defined in Section 94.03(c) and (d), shall be deemed to be in violation of Section 94.03(a) and may be issued a continuous abatement notice as set forth in this Section. Notice of violation by the Department of Metropolitan Development shall be mailed to the property owner's address shown on the records of the Wayne County Auditor by the method required by Indiana Code 36-7-10.1-3, or an equivalent service permitted under IC 1-1-7-1, to the owner of record of real property with a single owner or to at least one (1) of the owners of real property with multiple owners, at the last address of the owner for the property as indicated in the records of the Wayne County Auditor on the date of the notice. One letter within a calendar year shall be deemed sufficient notice for each and every lot, parcel, and lands owned by the offender within the corporate limits of the City in case of party's failure to comply with the terms of Section 94.03(a). The City shall have the right to cut and remove weeds and rank vegetation upon the property owner's failure to do so within ten (10) days after the mailing of notice of violation. A continuous abatement notice may be posted at the property at the time of abatement in the event the City initially obtains service upon the property owner as required by IC 36-7-10.1-3. Said continuous abatement notice shall serve as notice to the real property owner that each subsequent violation during the same calendar year for which the initial notice of the violation was provided may be abated by the City or its contractors.

(j) The Department of Metropolitan Development shall issue a bill to the property owner at the address shown on the records of the Wayne County

Auditor. The bill shall include the actual cost incurred by the City either by using its own employees or an independent contractor plus administrative costs. Administrative costs of \$35.00 shall be charged for the first cut order during a calendar year. Second and subsequent cut orders during a calendar year shall include the administrative cost of \$50.00. If a property owner owns more than one property, the property owner will be charged the administrative cost of \$35.00 for the first property cut and the administrative cost of \$50.00 for each and every lot, parcel and land subsequently cut during the calendar year. In addition to the above, a property owner may be subject to a fine up to Two Thousand Five Hundred Dollars (\$2,500) per occurrence for violation of this section.

(k) In the event a property owner disputes a notice of violation issued under Section 94.03(i) or a bill issued under Section 94.03(j), such property owner may file a written appeal with the Board of Public Works and Safety for rescission or adjustment of such notice or bill within fourteen (14) days after the date of such notice or bill.

(l) If the property owner fails to pay a bill under Section 94.03(h) within fifteen (15) days, the Department of Metropolitan Development shall certify to the Wayne County Auditor the amount of the bill plus an additional administrative cost of \$50.00 (of which, \$15.00 will be retained by Wayne County Government) incurred in the certification. The Wayne County Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the City of Richmond as provided in Indiana Code 36-7-10.1-4.

(m) Should any paragraph, sentence, clause, or phrase of this Section be properly declared unconstitutional or invalid for any reason, the remainder of said Chapter shall not be affected thereby. In the event the provisions of this Ordinance conflict with the provisions of Indiana Code 36-7-10.1-1 et seq. including any amendments, the provisions of the Indiana Code 36-7-10.1-1 et seq. shall be controlling. This Ordinance is not intended to interfere with, abrogate, or annul any other Ordinance, rule, regulation, statute, or other provision of the law. The requirements of this Ordinance should be considered minimum requirements, and where any provision of this Ordinance imposes restrictions different from those imposed by any other Ordinance, rule, regulation, or other provision of law, the more restrictive provisions or those provisions that impose higher protective standards for human health or the environment, shall be considered to take precedence. (Ordinance 67-1985; Ordinance 63-1991; Ordinance 23-1993; Ordinance 36-2011, Ordinance 13-2015)

#### 94.04 STORAGE OF MACHINERY AND PARTS

(a) The presence of inoperable storage of inoperable machinery, motor vehicles, and appliances, in active construction excavation and wrecking projects, uninhabitable mobile homes, and accumulations of junk and used materials of whatever description on any premises within view of any public street or way and within the corporate limits of the city is hereby declared to be a public nuisance unless such presence is a permitted use under Chapter 154 of this Code. junk vehicles and parts of machinery on any premises within view of any public premises or public street or highway, and not a licensed business to store junk vehicles, within the corporate limits of the city shall be a nuisance.

(b) Any code enforcement officer or police officer may issue a notice of violation upon observing a public nuisance as defined in the preceding subsection. Such violation is subject to a fine of \$20.00. The procedure for payment or trial is set forth in Section 10.99(h). person or officer of the city including but not limited to zoning inspectors and police officers, shall on finding a nuisance as defined in (a) above, file a complaint of the maintaining of a nuisance against the person on whose property the nuisance exists with the Board of Public Works and Safety.

(c) The Board of Public Works and Safety, upon being advised such a notice of violation was admitted or adjudged to exist, may cause the on receiving the complaint, shall cause the owner of the premises on which the nuisance is maintained, to be given notice to appear before the Board and to show cause at a hearing, why the nuisance should not be removed from the premises. The hearing is to be held not less than 7 days nor more than 21 days after receipt of a complaint.

(d) If at the hearing, the owner of the premises shall not show sufficient reason why the nuisance should not be removed or should such owner of the premises on which the nuisance is maintained, fail to appear, at the hearing, the Board of Public Works and Safety may order the nuisance removed.

(e) Should the owner of the premises on which the nuisance is maintained fail to remove the nuisance within 30 days, the Board of Public Works and Safety may cause the nuisance to be removed and charge the expense against the owner. The expense involved may be made a lien against the property pursuant to Indiana Code 36-1-6-2. That cost shall constitute a lien on the real estate from which the nuisance is removed.

(f) A list of persons who fail to comply with the foregoing requirements together with the description of their property on which a lien is created, and the cost and charges shall be furnished to the City Controller. It shall be his duty to collect the same as assessments for street and sewer improvements are collected. (Ord. 16-1978) Penalty, see 10.99

## ABANDONED VEHICLES

### 94.10 ADOPTION OF STATE LAW

The provisions of I.C. 9-13-2-1 and I.C. 9-22-1-1 et seq., including any amendments thereto, are declared to be in full force and effect for the city and those provisions of the law are incorporated herein by reference. (Ord. 3-1982)

### 94.11 CONFORMANCE WITH STATE LAW

All provisions of 94.10 through 94.14 shall be in conformance with and not in conflict with I.C. 9-9-1.1-1 through 9-9-1.1-15. Any provision found to be in conflict with the statute shall be deemed amended to conform to the statute. This subchapter is passed pursuant to I.C. 9-9-1.1-1 through 9-9-1.1-15 for the purpose of facilitating the removal, and disposition of abandoned vehicles in the city. (Ord. 3-1982)

### 94.12 TOWING AND STORAGE CHARGES

The Richmond City Police Department in cooperation with the Purchasing Department of the City shall be authorized to develop and implement a system for rotation calling of wreckers to tow vehicles which are not removed by owners direction or pursuant to other contract or agreement. The Police Department in conjunction with the Purchasing Department shall be authorized to develop standards for the implementation of such program and shall be authorized to establish a rate applicable to the wrecker services listed on such rotation service and shall be authorized to establish a standard fee based upon the complexity of the services requested and the time period of the services requested. Such fee shall be reasonable in light of all circumstances. (Ord. 25-1986)

### 94.13 ADMINISTRATION

- (a) The Board of Public Works and Safety shall promulgate such rules and regulations as it deems necessary for the operation and maintenance of the impoundment area.
- (b) The Board of Public Works and Safety shall be the public agency responsible for the storage and disposal of abandoned vehicles and may enter into bid contracts as necessary for the purpose of storage and disposition of abandoned vehicles. (Ord. 3-1982; Ord. 28-1982)

### 94.14 ABANDONED VEHICLE ACCOUNT

- (a) There is created an abandoned vehicle account to be administered by the City Controller in conformance with Indiana Code 9-9-1.1-14.

(b) The proceeds of the sale or disposition of any abandoned vehicle, or parts thereof, shall be paid directly to the towing service contracted by the City of Richmond for its unreimbursed towing, storage and disposal expenses of abandoned vehicles or parts thereof.

#### 94.15 ASSESSMENT OF VEHICLES

(a) If a tagged vehicle or parts are not removed within seventy-two (72) hours of tagging and the Richmond Police Officer ("Officer") suspects the market value of the vehicle is seven hundred fifty dollars (\$750.00) or less, the Officer shall prepare a written abandoned vehicle report of the vehicle or parts, including information on the condition, missing parts, and other facts that might substantiate the estimated market value of the vehicle or parts. Photographs shall be taken to describe the condition of the vehicle or parts.

(b) This assessment, described in subsection 94.15(a) above, shall be performed by an Officer designated by the Richmond Chief of Police. If the assessment confirms the market value of the vehicle is seven hundred fifty dollars (\$750.00) or less, the Officer shall provide for the immediate disposal of the vehicle to the contracted towing service. A copy of the abandoned vehicle report and photographs relating to the abandoned vehicle shall be forwarded to the Bureau of Motor Vehicles. The towing service may dispose of the abandoned vehicle not less than thirty (30) days after the date on which the towing service removed the abandoned vehicle and after the assessment has been made by the Richmond Police Department.

(c) The Richmond City Police Department shall retain a copy of the assessment and any photographs for two (2) years after the disposal of the vehicle or parts.

(d) If the assessment indicates the market value of the vehicle is greater than seven hundred fifty dollars (\$750.00), the notification and disposal procedures in I.C. 9-22-1 et seq., shall be followed. (Ord. 51-2007)

## SMOKE

### 94.30 DENSE SMOKE NUISANCE

The emission of dense, black or gray smoke from any smokestack or chimney used in connection with any stationary steam boiler, locomotive, or furnace, of any description, within the city, in any apartment house, office building, hotel, theater, place of public amusement, school building, institution, locomotive, or any other structure in the city, or in any building used as a factory, or for any purpose of trade, or for any other purpose except as a private residence, is a public nuisance. ('72 Code, 16.01) (Ord. 231-1910) Penalty, see 10.99

### 94.31 INSPECTION

The Chief of the Fire Department shall have authority to inspect, supervise, and require all steam boilers or furnaces, either stationary or locomotive, and all other furnaces within the city, to be so constructed, or, if already constructed, to be so altered or have attached thereto such efficient smoke preventatives as to prevent the production and emission of dense black and gray smoke. He shall further have authority to supervise the igniting, stoking, feeding, and attending of such steam boiler or other furnace fires. He, or his assistant, if any, shall have authority to enter any steam boiler or engine room, or building not occupied exclusively as a private residence. No person shall hinder or obstruct him in the performance of his duty. ('72 Code, 16.02) (Ord. 231-1910) Penalty, see 10.99

### 94.32 PERMIT TO CONSTRUCT FURNACE

When any person shall be desirous of constructing or altering any steam boiler, locomotive, or furnace within the city he shall make application at the office of the Chief of the Fire Department for a certificate for that purpose, and shall furnish a written statement giving the style and dimensions of the boiler and furnace, together with the height and size of stack or chimney, and the method or device to be adopted for preventing the emission of dense black or gray smoke. If, in the opinion of the Chief of the Fire Department, it shall appear necessary, drawings of the apparatus may be required. ('72 Code, 16.03) (Ord. 231-1910) Penalty, see 10.99

### 94.33 RESPONSIBILITY FOR VIOLATIONS

- (a) The owner, agent, lessee, or occupant of any building or structure of any description, and the general manager or superintendent having charge of any boiler or locomotive within the city, from the smokestack or chimney of which there shall issue dense black or gray smoke, shall be deemed guilty of creating a public nuisance and of violating the provisions of this subchapter.
- (b) The general manager, superintendent, or other officer of any railroad or other company, having charge or control of the operation of any locomotive or



engine within the city, who shall cause, permit, or allow dense black or gray smoke to be emitted from the engine, shall be deemed guilty of creating a public nuisance and of violating the provisions of this subchapter. ('72 Code, 16.04) (Ord. 231-1910) Penalty, see 10.99

#### 94.34 SOFT COAL FURNACES

Every boiler or other furnace, except in a private residence, used within the city and in which bituminous coal is burned as fuel, shall be constructed or altered or have attached thereto efficient preventatives which shall prevent the production and emission of dense black or gray smoke. No owner, lessee, or person having control of a steam boiler or other furnace shall use or allow the use of the steam boiler or other furnace if not constructed accordingly or not having the efficient smoke preventatives in good and efficient order and operation. ('72 Code, 16.05) (Ord. 231-1910) Penalty, see 10.99

#### 94.35 STOKING FURNACE

Every person having charge of the igniting, feeding, stoking, or attending to any steam boiler or other furnace, or any smoke preventive attached thereto, shall ignite, stoke, feed, or attend the furnace fire and keep the furnace and smoke preventatives attached thereto in good and efficient order so that dense black and gray smoke shall not be produced or emitted therefrom. ('72 Code, 16.06) (Ord. 231-1910) Penalty, see 10.99

#### 94.36 REPORTS: ORDERS TO REMEDY DEFECTS

It shall be the duty of the Chief of the Fire Department to personally inspect all chimneys, steam generating plants, and apparatus in use, make written reports to the Board of Public Works and Safety, and keep a permanent record of all essential facts. If, in the opinion of the Chief of the Fire Department, smoke emitted is a nuisance, he shall make complaint to the persons maintaining the nuisance defining its cause. If the cause is unskillful hand stoking, he shall make immediate complaint against all persons violating this subchapter. If the nuisance is caused by the construction of the furnace, size or height of stack, connections or engineering details relating to boiler or furnace construction or connection, he shall make a statement of the cause of the nuisance and report to the owners or operators as to necessary changes, alterations, or additions and fix a limit of time for the changes, alterations, or additions to be made. The time shall not exceed three months. In the event, however, that it is necessary to install stokers, the time shall not exceed six months. If it is apparent from the inspection of the Chief of the Fire Department that no change, appliances, or alteration of the furnace, boilers, connections, stack, or appurtenances thereto would eradicate the smoke nuisance, and that the nuisance is caused by the steam generating plant being worked in excess of its normal capacity or, for other organic reasons, cannot be converted to eliminate the nuisance, then he shall report to the owners or operators the conditions of the plant and the required changes or additions necessary so that it will not operate as a nuisance. Notices shall be in writing, and at the expiration of the time allowance the Chief of the

Fire Department shall report as to the conditions of the plant. In the event it is maintained as a nuisance, he shall make complaint against all persons violating this subchapter. ('72 Code, 16.07) (Ord. 231-1910)

#### 94.40 REAL ESTATE USED FOR ILLEGAL SALE OF DRUGS

a. For purposes of Section 94.40 of Richmond Code, the use of non-owner occupied real property to commit an act constituting an offense under I.C. 35-48-4 shall be deemed a civil nuisance.

b. The provisions of Indiana Code 34-19-3, as amended from time to time, are hereby incorporated by reference and shall be utilized by the City in the abatement of a drug-related civil nuisance.

c. The procedures hereinafter set forth shall be followed prior to the City initiating an action pursuant to I.C. 34-19-3.

d. No owner of real estate located in the City shall knowingly allow that real estate to be used in such a manner so as to constitute a civil nuisance as defined herein. An owner of such real estate is deemed to have knowledge of such activity upon receipt of notice as provided in subsection (f) herein. For purposes of this section, an owner of real estate is defined as any person or entity that, alone or with others, has legal or equitable title to any real property. When any real property is owned by more than one person or entity, or when legal and equitable title is held by different persons or entities, all such persons or entities shall be jointly and severally liable for any violations of this section.

e. Upon receipt of any report or complaint of suspected activity constituting a civil nuisance as defined herein, the Richmond Police Department shall conduct such investigation as it deems necessary. At any time prior to or during said investigation, the Department shall, when deemed appropriate under the circumstances, send an initial warning letter to the owner and/or occupant of the property that it suspects such activity may be occurring and that an investigation is about to commence or is ongoing. The initial warning letter shall inform the recipient that:

1. if it is determined that a civil nuisance is occurring, it is a violation of both state and local law;

2. if it is determined that a civil nuisance is occurring, it may result in fines being assessed pursuant to Richmond Code;

3. if it is determined that a civil nuisance is occurring, the owner must abate the suspected nuisance to avoid any fines being assessed under this section by evicting those responsible;

4. if it is determined that a civil nuisance is occurring, the Richmond Police Department will, at the owner's request, deliver an eviction notice to the responsible tenant;

5. if its investigation reveals that a civil nuisance is in fact taking place, the City and the Police Department intend to take further legal action; and

6. if it is determined that a civil nuisance is occurring, the property owner will be notified and given the opportunity to abate the nuisance before any fines are assessed.

f. Whenever the Richmond Police Department determines that a civil nuisance as defined in subsection (a) herein exists, which determination must be made by the Chief of Police or a designated officer and approved by the City Law Department, the Police shall, when deemed appropriate under the circumstances, cause written notice to be served on the owner and occupant that a present occupant or tenant of that property has been using the property so as to constitute a civil nuisance as defined herein or has been allowing the property to be so used. Said notice shall contain a copy of this section of Richmond Code and shall inform the recipient of the following:

1. that a civil nuisance exists on the property;
2. the date and time the civil nuisance was first discovered;
3. the location on the property where the civil nuisance is allegedly occurring;
4. that such activity is a violation of both state and local law;
5. that such activity may result in fines being assessed pursuant to Richmond Code;
6. that the owner must abate the civil nuisance by evicting those responsible to avoid any fines being assessed under this section;
7. that, if the owner chooses to abate the civil nuisance by evicting those responsible, he or she must so inform the Police Department in writing and commence said eviction within thirty (30) days of receipt of this notice;
8. that the Richmond Police Department will, at the owner's request, deliver an eviction notice to the property; and

9. that if the owner fails to abate the civil nuisance, the City and the Police Department may take further legal action, including but not limited to, filing suit pursuant to IC 34-19-3.

g. After receiving an initial warning letter or second notification under this section, if a property owner so requests, an eviction notice signed by the property owner shall be delivered to the responsible tenant by the Richmond Police Department. (The Police Department shall inform the property owner that, if the tenant or occupant refuses to leave, it will be necessary to file an eviction proceeding through the proper court.)

- h. 1. The notice required pursuant to subsection (f) shall be given by:

- a. sending a copy of the notice by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;
- b. delivering a copy of the order or statement personally to the person to be notified; or
- c. leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified.

2. If, after a reasonable effort, service is not obtained by a means described in subsection (h)(1), service may be made by publishing the notice in accordance with I.C. 5-3-1.

3. Notice is deemed given to the owner, upon receipt of notice as indicated above, by the owner of record pursuant to the records and files of the Wayne County Assessor's Office.

i. Within thirty days of receipt of notice in accordance with subsection (f), the owner must initiate such legal action as is necessary to evict all persons responsible for or permitting the civil nuisance (which shall include, at a minimum, a notice of eviction delivered by the Richmond Police Department or the property owner by serving notice pursuant to I.C. 34-19-3-5), and must diligently prosecute such legal action to a conclusion.

j. In the case of a multiple unit dwelling, the only person necessary to name in an eviction proceeding is the tenant/occupant occupying the actual unit involved with the nuisance as defined herein.

k. Charging an owner of real estate with a violation of this section shall be adjunct to, and not a substitution for, any criminal charges filed against occupants or tenants of that owner's real estate for any illegal activity.

l. The Chief of Police shall use reasonable efforts to train, educate, and assist owners of real estate in evicting, and avoiding the placement of, tenants or occupants in their real estate who are known violators of illegal activities under IC 35-48-4.

m. Any owner of real estate violating this section, which violation causes the City to begin its own eviction process pursuant to I.C 34-19-3, shall be fined fifty dollars (\$50) to assist with costs associated in utilizing state law. No fines shall be assessed until at least thirty (30) days after receipt of notice required by subsection (f). Each day such violation continues shall be deemed a separate violation, beginning with the 31<sup>st</sup> day following receipt of notice as required by subsection (f).

n. Nothing in this section shall be construed to encourage or authorize the discrimination by lessors against any persons based upon race, creed, religion, sex, age or national origin. Rather, it is the intent of this section to hold persons accountable for acquiescing in or participating in the continued use of his/her property as the location of illegal drug activity.